

**Small Loans  
2007 Legislative Amendments  
Effective July 1, 2007****Questions, Answers, and Administrative Interpretations****1. What remedies may be imposed if a lender makes a loan that does not qualify as a small loan under IC 24-4.5-7-104, is for a term shorter than that specified in IC 24-4.5-7-401(1), or is made in violation of IC 24-4.5-7-402?**

Answer - The department may require the lender to conform the finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508 (maximum rates for supervised loans).

**2. What is the maximum principal loan amount permitted on a single small loan?**

Answer – The maximum principal loan amount has increased to \$550. This amount, in all instances, is indexed and subject change each July 1 of the even numbered years, similar to many other dollar amounts listed in the IUCCC.

**3. How are maximum permissible finance charges computed on small loans?**

Answer – The previous step rate structure remains in place, and finance charges on amounts greater than \$400 up to \$550 are limited to 10% of the amount over \$400.

**4. What fees are permitted on small loans?**

Answer – The only fee permitted (in addition to the finance charge) on a small loan is one return item fee (NSF fee) for each returned or dishonored item. This additional charge may be assessed one (1) time regardless of how many times a check or an authorization to debit the borrower's account may be submitted by the lender and dishonored. The maximum amount of this fee has been increased to \$25. A lender may still file legal action against a customer, but cannot file/claim any additional costs incurred by the lender, such as attorney fees and treble damages, as per prior advice from the DFI. The court may award court costs and post judgment interest.

A lender may present a borrower's check for payment or exercise a borrower's authorization to debit the borrower's account not more than 3 times. The 3 presentment limit is consistent with other check presentment regulations and ACH rules.

**5. Has there been a change to the consecutive small loan count limit before the minimum 7-day cooling off is triggered?**

Answer – No change is made to the consecutive small loan count that triggers the cooling off period. **However, recognizing the existence of the payday lender databases, and consistent with the wording of the statute, the 7-day cooling off period will be applied on an industry-wide basis, rather than a lender basis.**

A borrower can have an initial small loan plus 5 consecutive small loans before the 7-day cooling off period is required. Unless the 7-day period from the date the 5<sup>th</sup> consecutive small loan is paid in full has expired, another small loan may not be made to the borrower by any lender.

The only exception is when a borrower has loans with two separate lenders. In this instance, when a loan sequence reaches the 7-day cooling off period with one of the lenders, the other lender may continue to offer the borrower consecutive small loans until that sequence reaches the 7-day cooling off period, or until the consecutive small loan count is broken with that lender.

**6. Can the borrower and lender agree to a simple interest loan within 7 days after the due date of the fifth consecutive small loan?**

Answer – No, this option is removed from the statute and replaced with an option for an Extended Payment Plan (EPP). A lender shall offer the borrower the option to repay the 3<sup>rd</sup> consecutive small loan, and any subsequent consecutive small loans, under an EPP. An EPP must be disclosed in writing and agreed to by the borrower and the lender on a form approved by the Director of the Department. DFI will provide a model form to all lenders to comply with this requirement.

Borrowers may request an EPP if they have not defaulted on the outstanding small loan and if they owe on a 3<sup>rd</sup>, 4<sup>th</sup>, or 5<sup>th</sup> consecutive small loan. The EPP must have at least 4 equal installments covering not less than 60 days. The lender may not assess any fee or charge for an EPP. The EPP must be in writing and signed by both the borrower and the lender. A borrower may not enter into another small loan with any other lender while engaged in an EPP except as detailed below. An EPP is an extension of an outstanding small loan and not a new loan.

**If a borrower uses the EPP on a 5<sup>th</sup> consecutive small loan, the borrower may not enter into another small loan transaction with any other lender until 7 days after the EPP is paid in full.**

The only exception is when a borrower has loans with two separate companies. In this instance, when a borrower is in an EPP with one of the lenders, the other lender may continue to offer the borrower consecutive small loans until that sequence reaches the 7-day cooling off period, or until the consecutive small loan count is broken with that lender.

**7. What is the maximum percentage of monthly gross income a consumer can borrow on a small loan transaction, or a combination of transactions?**

Answer – The principal amount and finance charge (total of payments) on the small loan to be issued, plus any other small loan balances (computed by adding the principal plus the finance charge plus NSF fee, and deducting all partial payments) the borrower has outstanding with any lender, may not exceed 20% of the borrower's monthly gross income. This has been increased from 15%. However, the 20% requirement will apply to all loans rather than per lender.

**8. What method or formula is used to determine the maximum amount a borrower can be loaned on a small loan if the borrower has another small loan outstanding?**

Answer – The combined amount on two small loans may not exceed \$550, exclusive of finance charges, and the maximum is also limited by monthly gross income. A borrower's eligibility amount is computed by determining the outstanding balance (original principal amount, plus NSF fee, minus partial payments) on an existing loan, and deducting that amount from \$550. Once again, this aggregate amount is limited further by the monthly gross income test.

**9. If a small loan is discharged in bankruptcy court, how is it treated for database purposes?**

Answer – If a borrower presents evidence to a lender that a loan has been discharged in bankruptcy, the lender shall cause the record of the borrower's loan to be updated in the database to reflect the discharge.

**10. At what point is a lender required to update the borrower's account in the database to show the account is paid?**

Answer – The database must be updated to reflect the presentment of the borrower's check or the exercise of the authorization to debit the borrower's account. If the check or the exercise of the debit authorization is dishonored due to insufficient funds, the lender shall reenter the record of the loan and the consecutive loan count reverts to the count in place before the check or debit authorization was dishonored.

**11. If a borrower makes a partial payment, is the lender required to update the account in the database?**

Answer – A lender shall report partial payments to the database when such payments are made, and such payments will affect the calculation of the amount the consumer is eligible to borrow.

**12. What happens to the accounts of a lender who stops doing business in Indiana?**

Answer – These situations are handled on a case-by-case base, but the Director may require certain actions by the database providers to reflect an updated status of the accounts.

**13. What are the civil penalty provisions available to the Director for violations of Section 7-404 regarding the database?**

Answer – The Director may impose a civil penalty of \$100 per violation of this Section or any rule or policy adopted to implement this Section.

**14. Do the provisions of the Small Loan Act (SLA) apply to out-of-state or Internet lenders who solicit loans with Indiana residents?**

Answer – Yes, the territorial application section of the IUCCC has been modified to require these lenders to become licensed, and to comply with the Chapter 7, Small Loans, if they solicit small loans from Indiana residents.

**15. Can income from more than one person be used to determine the total amount of eligibility on a small loan?**

Answer – No. A small loan is limited to 20% of the monthly gross income of one borrower, and the loan is recorded on the database under one borrower's identification number. Any other person (spouse) with income must qualify independently for a small loan of their own and have that loan registered on the database under their own identification number.

**16. What is the lender responsibility when a borrower applying for a small loan represents in writing that the borrower has one or more outstanding small loans, but these small loans are not reflected in a database search?**

Answer – The lender must perform additional due diligence to determine the accuracy of the statement by the borrower, to determine the accuracy of the database verification, to determine the reasons for any discrepancies, and to document the eligibility of the borrower.

**17. Does the DFI have an approved disclosure for the extended payment plan (EPP) as outlined in IC 24-4.5-7-401(3), effective July 1, 2007?**

Answer – Attached is a sample disclosure. A lender may use this sample form, create a similar form, or separate the disclosure of the EPP from any terms and conditions. All of these documents will also be posted at the DFI website.